



MINUTES

**CITY OF SCOTTSDALE POLICE LOCAL BOARD OF THE
PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS)
REGULAR MEETING
11:00 a.m., Thursday, January 16, 2014
Police and Fire Department Headquarters—Operations Room
8401 E. Indian School Road
Scottsdale, Arizona 85251**

PRESENT: Jack Cross, Chairperson/Mayoral Designee
James Butera, Elected Member (via telephone from 11:24 – 11:44 and
11:58 – 12:03)
Bernadette La Mazza, Citizen Member/Merit Head
Jeffrey Walther, Elected Member

ABSENT: Jeffrey Burg, Citizen Member

STAFF: Ken Nemec
Chanda Washington

GUESTS Hannah Auckland, Esq.
Officer Darius Taylor

Call to order:

Chairman Cross called the meeting to order at 11:02 a.m. He noted that Board Member Burg's absence was excused and that Board Member Butera was expected to join the meeting later.

Mr. Ken Nemec read an excerpt from a letter by Mr. Michael Anthony: "With a mixture of sadness and anticipation I am announcing my retirement from the practice of law effective December 31, 2013."

Chairman Cross acknowledged Mr. Anthony's work not only for the Scottsdale boards but for the entire state. Mr. Anthony was involved in the field for a long time.

Roll call:

A formal roll call confirmed the members present as stated above.

Possible Executive Session:

Executive Session may occur at any time during this meeting.

1. Review and approval of regular session meeting minutes—December 19, 2013

BOARD MEMBER WALTHER MOVED TO APPROVE THE REGULAR MEETING MINUTES OF THE DECEMBER 19, 2013 PSPRS POLICE LOCAL BOARD MEETING AS PRESENTED. BOARD MEMBER LA MAZZA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT AND BOARD MEMBER BUTERA WAS NOT YET PRESENT.

2. Review and approval of executive session meeting minutes—December 19, 2013

BOARD MEMBER WALTHER MOVED TO APPROVE THE EXECUTIVE SESSION MINUTES OF THE DECEMBER 19, 2013 PSPRS POLICE LOCAL BOARD MEETING AS PRESENTED. BOARD MEMBER LA MAZZA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT AND BOARD MEMBER BUTERA WAS NOT YET PRESENT.

3. Induction of new Scottsdale Police Officers into PSPRS

Ms. Washington reported that no new officers were to be inducted.

4. Discussion and Vote on the DROP (Deferred Retirement Option Plan) Termination and Normal Retirement Application of Assistant Police Chief Sean E. Duggan

Mr. Nemec stated that Assistant Police Chief Sean Duggan is retiring as of January 13, 2014. Assistant Chief Duggan has 26 and a half years of service in the system. The monthly pension associated with the application is \$8,083.75. He entered the DROP in June, 2013. All of his paperwork is in order.

BOARD MEMBER WALTHER MOVED TO APPROVE THE DROP (DEFERRED RETIREMENT OPTION PLAN) TERMINATION AND NORMAL RETIREMENT APPLICATION OF ASSISTANT POLICE CHIEF SEAN E. DUGGAN, SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER LA MAZZA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT AND BOARD MEMBER BUTERA WAS NOT YET PRESENT.

On behalf of the Board and the citizens of Scottsdale, Chairman Cross expressed appreciation for Assistant Police Chief Duggan's 27 years to service to the City.

**5. Discussion and Vote on the DROP (Deferred Retirement Option Plan)
Termination and Normal Retirement Application of Police Sergeant Thomas L. Macari, Jr.**

Ms. Washington reported that Police Sergeant Thomas L. Macari, Jr. is retiring from the DROP on January 30, 2014. He had 25.605 years of service when he entered the DROP and has been in the DROP program approximately two years. The associated monthly pension is \$6,098.16. All of his paperwork is in order.

BOARD MEMBER LA MAZZA MOVED TO APPROVE THE DROP (DEFERRED RETIREMENT OPTION PLAN) TERMINATION AND NORMAL RETIREMENT APPLICATION OF POLICE SERGEANT THOMAS L. MACARI, JR., SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT AND BOARD MEMBER BUTERA WAS NOT YET PRESENT.

Chairman Cross thanked Sergeant Macari on behalf of the PSPRS Board and the people of Scottsdale for his over 27 and a half years of dedicated service.

**6. Discussion and Vote on the DROP (Deferred Retirement Option Plan)
Termination and Normal Retirement Application of Police Officer Mark S. Wagner**

Mr. Nemec stated that Officer Mark S. Wagner is retiring as of February 28, 2014. He has over 29 years of service with the City and qualifies for a monthly pension of \$4,990.96. He entered the DROP on July 31, 2010. All of his paperwork is in order.

Chairman Cross commented that the length of service with Scottsdale is a testament to the City. The average length of service in many police departments is 21 years. The fact that good officers serve so much longer shows that the Scottsdale Police Department is a good organization.

BOARD MEMBER WALTHER MOVED TO APPROVE THE DROP (DEFERRED RETIREMENT OPTION PLAN) TERMINATION AND NORMAL RETIREMENT APPLICATION OF POLICE OFFICER MARK S. WAGNER, SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER LA MAZZA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT AND BOARD MEMBER BUTERA WAS NOT YET PRESENT.

Chairman Cross said that the Board and the citizens of Scottsdale truly appreciate Officer Wagner's almost 30 years of service.

7. Discussion and Vote on the Survivor Benefits Application of Mrs. Judy Finch, Widow of Deceased Police Officer Roy D. Finch

Ms. Washington noted that retired Officer Finch passed away on December 11, 2013. The monthly pension associated with this benefit is \$3,517.34. All of Mrs. Finch's paperwork is in order.

Chairman Cross commented that it is good that upon retirement, the information required to apply for survivor's benefits is on file, making the application simpler and less stressful.

BOARD MEMBER LA MAZZA MOVED TO APPROVE THE SURVIVOR BENEFIT APPLICATION OF MRS. JUDY FINCH, WIDOW OF DECEASED POLICE OFFICER ROY D. FINCH. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT AND BOARD MEMBER BUTERA WAS NOT YET PRESENT.

Chairman Cross advised Police Officer Taylor that the Board would consider his request after dealing with other items on the agenda.

9. Discussion and Vote on the recently prepared PSPRS Police Board Local Annual Report for 2013

Chairman Cross commented that although many Board meetings are fairly short, the Board is able to accomplish a lot because of the hard background work of staff. Staff also handles many inquiries on a day to day basis which Board Members never see.

BOARD MEMBER WALTHER MOVED TO APPROVE THE 2013 ANNUAL REPORT FOR THE POLICE BOARD OF THE PSPRS. BOARD MEMBER LA MAZZA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT AND BOARD MEMBER BUTERA WAS NOT YET PRESENT.

10. Discussion of the new process that will apply in 2014 for City Official Ethics Training

Chairman Cross confirmed that everyone had received the video staff sent out and reminded Board Members to complete and return the associated paperwork. He commented that the City Attorney's Office did a good job of presenting the information in an easy to read format.

11. Report to the Board on recently completed transfers of service, if any

Ms. Washington confirmed there were no transfers of service to report.

Chairman Cross called a short recess. Board Member Butera joined the meeting via telephone at 11:24 a.m.

8. Discuss and Consider request from Police Officer Darius Taylor to reconsider the Board's previous denial of his application for Accidental Disability Retirement

Chairman Cross welcomed Board Member Butera and suggested going into executive session in order to receive legal advice from Counsel.

BOARD MEMBER WALTHER MOVED TO ADJOURN INTO EXECUTIVE SESSION TO DISCUSS RECONSIDERING THE ACCIDENTAL DISABILITY RETIREMENT APPLICATION OF POLICE OFFICER DARIUS TAYLOR. BOARD MEMBER LA MAZZA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.

Police Officer Darius Taylor joined the meeting. Chairman Cross welcomed him and asked if he had additional information to provide. Officer Taylor said he did. Ms. Washington presented information from a doctor's visit to Ortho Arizona Hand & Wrist Specialists on January 6 and distributed copies to the Board Members. Officer Taylor confirmed that he has given consent for the Board to discuss his medical condition in open session.

Chairman Cross read a portion of the doctor's conclusions into the record:

"It is my opinion that Mr. Taylor has a right wrist condition that is the basis for his disability application. His right wrist injury and the effects thereof prevent him from performing a reasonable range of duty within the classification of a police officer. Specifically he is unable to safely interact with suspects. Inasmuch as the injured hand is his dominant hand, he would in my opinion have difficulty handling his firearm. It is my opinion that these are permanent restrictions. The right wrist condition clearly occurred in the context of a job-related injury."

Officer Taylor told the meeting that his condition has not changed and his hand still hurts.

Board Member Walther apologized for having missed the last meeting at which this application was discussed. He noted that on the last page of Dr. Soscia's report, to Question 1, "Does Mr. Taylor have a physical or mental condition which totally prevents him from performing a reasonable range of duties within the employee's job description?" Dr. Soscia says he can perform a majority of the duties, but then says "Mr. Taylor may not be able to perform safely and efficiently the following: Subduing resisting offenders using necessary force where appropriate, including deadly force, lifting and moving up to 160 pounds for long distances." In Question 2, also related to a reasonable range of duties: "This is not to say that he cannot do these functions, but he may pose a greater risk for himself and those around him, especially in trying to subdue a resisting offender or drawing his firearm." Board Member Walther said these are among the primary job safety functions related to being a police officer so he does not see a disparity between what the IME, Dr. Soscia, is saying and the opinions of Dr. Guidera. Dr. Guidera also speaks of difficulty with drawing a weapon and dealing with suspects. Board Member Walther asked whether the Board is getting caught up on the definition of "reasonable range of duties."

Chairman Cross directed his attention to question 2 on the questionnaire, which is where the problem lies. "Does the injury or condition permanently prevent the employee from performing a reasonable range of duties within the employee's job classification?"

Dr. Soscia answered "No." In the body of the written report the opinion was muddy, Chairman Cross said, but in the questionnaire, which goes to the Fund Manager, Dr. Soscia answered concisely and clearly.

Board Member La Mazza added that for her a critical element in the discussion was that there was a discrepancy. The report does not say that Officer Taylor cannot do transitional duty. Her concern was that the report did not state that Officer Taylor's condition is permanent. One report mentioned that a change in condition could occur within a year. That would help the City find transitional duty for Officer Taylor.

Chairman Cross said that one qualification for disability retirement in the statute is that the officer left their employment by reason of disability. However Human Resources has some concerns about the reason for Officer Taylor's termination. He has over 20 years of service and is thus eligible for normal retirement.

Board Member Butera explained that he needed to leave the meeting due to an emergency where he was on duty.

Board Member La Mazza recalled that she had asked Officer Taylor why he left the Department so soon after receiving his diagnosis rather than going on transitional duty. Officer Taylor told her when he had been on transitional duty a few years ago he was told he would be terminated. He felt the same thing would happen again.

In response, Officer Taylor clarified that this just happened to him in 2012. He knew it would take at least as long to heal from the current injury. He had just completed his masters degree. From what his doctor told him, he realized that this is a permanent injury that would prevent him from working as a police officer. He chose to move on because he was not safe to work on the job.

At the request of Chairman Cross, Ms. Auckland swore Officer Taylor in.

Board Member La Mazza asked him if he is under the impression that he is permanently disabled. Officer Taylor confirmed that he is. Based on studies conducted on this type of surgery, only 50% of hand strength and use is restored. He demonstrated the range of motion in both wrists and said his right wrist will not improve. He went for the second surgery because of issues drawing and holding his weapon.

Board Member La Mazza asked whether the doctor had shown Officer Taylor the documentation he was putting together. Her concern is that if the doctor told him he would be permanently disabled, she would assume the paperwork would reflect that. Officer Taylor said the doctor gave him this information in the course of a discussion. Board Member La Mazza asked Officer Taylor what his impression was in the summer of 2013. Officer Taylor said the plan then was to see how he progressed. There was not a hard and fast finding of permanent disability. He was told the recovery process would be extensive.

Ms. Auckland referred to the minutes of the September 26, 2013 meeting when Dr. Soscia was on the phone. Mr. Anthony was at the meeting and explained what permanency means

under the PSPRS statutes. Any condition that lasts longer than a year is considered permanent. Temporary disability lasts up to 12 months. Officer Taylor does not qualify for temporary disability because he is past the normal retirement date. She read from the minutes:

"In response to Mr. Anthony's inquiry regarding whether the doctor could give the Board any guidance regarding his opinions on the time frame, Dr. Soscia responded that for any type of surgical procedure, especially regarding the hand, it takes the patient about a year and a half to become stationary and reach their maximum medical improvement."

Officer Taylor commented that is Dr. Soscia's opinion in the IME. His own doctor has told him that recovery takes a minimum of 18 months to two years. It could take up to three years before he knows for sure what he can and cannot do with his dominant right hand.

Chairman Cross said that comparing the questionnaire to the written report it seems there must be some errors. He noted that question 5 asks "During your examination of all medical evidence, did you include any pre-existing or other injuries or conditions that existed or occurred prior to the employee's current PSPRS membership date that played a role in the disability claim by the employee?" Dr. Soscia replied "Yes," but on another page he replied "No" to that question. Chairman Cross opined that they really need to have Dr. Soscia on the phone to clarify. He felt that the written narrative more closely reflected the doctor's opinion than the replies to the questionnaire.

Board Member La Mazza recalled that Dr. Soscia was asked about the checklist in the phone interview. Ms. Auckland said she did not recall that they asked him if the information in the checklist was accurate as to the pre-existing condition. After further review she quoted the September 26, 2013 minutes:

"Dr. Soscia confirmed that the circled "yes" refers to the carpal tunnel syndrome that the Applicant incurred while employed that was previously denied, as well as another injury that was denied because the Applicant waited too long to report it."

Chairman Cross said this is an interesting situation. The letter helps him understand the original doctor's report a little better. He said the Board relies a lot on the police Board Members to help understand what is a reasonable range of job duties. There is also concern as to whether Human Resources processes were followed correctly. In his sworn testimony, Officer Taylor told the Board that he terminated employment because he did not feel safe as a police officer, afraid his medical restrictions might put himself or others in jeopardy. Chairman Cross said he is unsure what to do at this point.

Board Member Walther said he appreciates the clarification. He summarized that they are talking about an injury and recovery versus a process. The normal police department process is that an employee returning from injury or surgery is placed on transitional duty for an extended period of time if necessary. There is a standard set time period but based on the department's review of the injury and the progress the time can be extended at the discretion of the Chief of Police. In reading what Dr. Soscia and Dr. Guidera wrote, Board Member Walther said it gave him pause for concern. Both doctors agreed Officer Taylor can perform a reasonable range of duties but cannot interact with suspects or draw his weapon. He cannot support approving disability retirement at this time because the process is not

completed. Officer Taylor resigned or retired prior to the department getting involved in the normal process to see whether the injury is permanent after a recovery period. Even today it is too soon to say that the injury is permanent.

Board Member La Mazza said she is struggling with this. She has a difficult time supporting consideration. Since the Board's initial consideration of the application, additional information has emerged which would have been helpful at the time. They did not have the opportunity to work with Officer Taylor in transitional duty. She quoted from the minutes of the September 26, 2013 meeting:

"In response to Board Member La Mazza's inquiry, Police Officer Taylor confirmed that May 13, 2013 was the date of his surgery and the effective date of retirement was June 27, 2013. He elaborated that since Dr. Guidera had informed him that he would have a minimum 20% disability after the surgery, he realized that he would not be able to do his job effectively and hoped to finish his master's degree before retiring."

She felt that there could have been a possibility of recovery but that there is no way to measure what progress occurred between May 13 and June 27, 2013. The information they have today is helpful. Had Officer Taylor still been employed she would certainly be looking at it in a different light. She feels a chance was missed for the City to be able to assist Officer Taylor during that time period.

Officer Taylor told the Board that at his previous surgery for the same injury he was told he would be terminated on September 1, 2012. That date was subsequently changed to September 19, 2012. The City was cutting ties and there was no extended period of time. From his doctor, he knew that recovery from the second surgery would be longer. Based on what he knew, that was why he opted to retire and move on with life, although it was a hard decision for him to make.

Board Member Butera rejoined the meeting at 11:58 a.m.

Officer Taylor summarized that Dr. Guidera clearly states that his injury is permanent and prevents him from doing his job.

At the request of Chairman Cross, Board Members Walther and La Mazza summarized their thoughts for the benefit of Board Member Butera.

BOARD MEMBER WALTHER MOVED TO DISAPPROVE THE ACCIDENTAL DISABILITY RETIREMENT PENSION APPLICATION OF POLICE OFFICER DARIUS L. TAYLOR, SINCE HE DOES NOT MEET THE STATUTORY REQUIREMENTS, SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER LA MAZZA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.

Chairman Cross said staff would let Officer Taylor know what the next step in the process is.

ADJOURNMENT:

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 12:03 a.m.

Recorded and Transcribed by AVTronics Inc., d/b/a AVTranz Transcription and Reporting Services

Respectfully Submitted by:

REVIEWED BY:

Ken Nemec
PSPRS Police Local Board Secretary

Jack Cross
PSPRS Chairman/Mayoral Designee